

After Recording Mail To:
HG Utah 1, LLC
Attn: Robb Horlacher
1 Summit Ridge Parkway
Santaquin, UT 84655

AGREEMENT OF EXPIRATION OF
ANNEXATION AND DEVELOPMENT AGREEMENT
FOR SUMMIT RIDGE

This Agreement of Expiration of Annexation and Development Agreement (“**Agreement**”) is entered into as of the _____ day of December, 2020 by and between, on the one hand, HG-Utah 1, LLC, a Utah limited liability company (“**Developer**”) and Utah Summit Partners, LLC, a Utah limited liability company (“**USP**”), and on the other hand, Santaquin City, a Utah municipality (“**City**”). The Developer, USP and the City are sometimes referred to individually as a “**Party**” or collectively, as the “**Parties**.”

RECITALS

A. WHEREAS, that certain Annexation and Development Agreement for the Summit Ridge Project Area was entered into December 6, 2000 and recorded in the official records of the Utah County Recorder, December 28, 2000 as Entry No. 102458:2000 and the official records of the Juab County Recorder, December 28, 2000 as Entry No. 00222421 (the “**Original Development Agreement**”) to establish the rights and obligations of the City and the original developer thereunder.

B. WHEREAS, that certain First Amendment to Annexation and Development Agreement dated October 25, 2006 was recorded in the official records of the Utah County Recorder on October 31, 2006 as Entry No. 144933:2006, and the official records of the Juab County Recorder, as Entry No. 00245622:2006 (the “**First Amendment**”). The First Amendment covered a portion of the property under the Original Development Agreement, described in the First Amendment as the “**Land**” and, among other matters:

- a. modified certain design guidelines,
- b. authorized certain impact fee reimbursements to developer,
- c. required the payment of \$850.00 per “lot platted after the first 400 lots and up to the 2000th lot” at the time of recordation of the applicable plat,
- d. established an agreement to enter into a Connection Agreement,
- e. required the original developer to dedicate three acre feet of water for each platted acre in exchange for water credits,
- f. obligated the developer to dedicate a public facility site to the City, and
- g. established certain requirements for the improvement and dedication of parks, open space and trails.

C. WHEREAS, on even date with the First Amendment, that certain Connection Agreement was recorded in the official records of the Juab County Recorder, as Entry No. 00245622:2006 (the “**Connection Agreement**”) pursuant to which Developer is entitled to pro rata reimbursement for the construction and installation of bridges and arterial roadways and collector roads from benefitted landowners as a condition for the City to approve any such landowner’s final plat or to issue a building permit.

D. WHEREAS, after the effective date of the First Amendment, Developer purchased the Land and then conveyed certain portions of the Land to USP.

E. WHEREAS, that certain Second Amendment to Annexation and Development Agreement was recorded in the official records of the Utah County Recorder on April 21, 2020 as Entry No. 52340:2020 (the “**Second Amendment**” and together with the Original Development Agreement and the First Amendment, the “**Development Agreement**”). The Second Amendment covered the Land and, among other matters:

- a. confirmed the dedication of the public facility site to the City, and
- b. established a new method and guidelines for the improvement and dedication of parks, open space and trails.

F. WHEREAS, Developer, USP and the City entered into that certain Funding and Reimbursement Agreement dated August 14, 2018 to provide a mechanism for reimbursement to Developer and USP for participating in the funding of the Initial Phase of the construction of a roadway connecting Summit Ridge Parkway to Utah State Highway 6 (the “**Funding and Reimbursement Agreement**”).

G. WHEREAS, the Development Agreement will expire by its terms on December 5, 2020 and the Parties desire to clarify their relative rights and obligations upon such expiration.

H. WHEREAS, the Parties find that the terms and conditions set forth in this Agreement are in the best interests of HG Utah, USP, the City and the residents of the City, including those of Summit Ridge.

NOW, THEREFORE, for good and valuable consideration, the Parties agree as follows:

1. Expiration of the Development Agreement. Developer and the City acknowledge and agree that the Development Agreement, which is comprised of the Original Development Agreement, the First Amendment and the Second Amendment, shall expire by the Development Agreement’s terms on December 5, 2020 (the “**Expiration Date**”) unless extended by resolution of the City Council on or before that date.

2. Connector's Agreement and Funding and Reimbursement Agreement. Developer and the City acknowledge and agree that the Connector's Agreement and Funding and Reimbursement Agreement shall continue on their own terms after the expiration of the Development Agreement. The Connector's Agreement will expire on October 24, 2026.

3. Zoning. In accordance with Ord. 10-7H-23, upon the Expiration Date, unless a subsequent development agreement or zone change is approved by the City Council, the zoning of the portion of the Land intended for residential development and not then platted shall become subject to the land use regulations contained within the Residential R-10 zone. The commercial portion of the Land shall default to the land use regulations contained within the Interchange Commercial (C-1) zone.

4. Impact Fee Credits. Any impact fee credits earned as of the Expiration Date shall continue to be available to Developer or Developer's designee after such Expiration Date.

5. Platted Lot Pre-Payment. Under the First Amendment, Developer was obligated to pay the City \$850.00 at such time as the plat for each of the 401st through 2000th lot was recorded ("**Platted Lot Payment**"). Prior to the date of this Agreement, Developer made a portion of the Platted Lot Payment in connection with the recordation of certain plats, but, as less than 2,000 lots have been platted, a balance of the Platted Lot Payment remains to be paid to the City. Developer and USP each agree to deposit the following sums into an escrow account for the balance of \$991,950.00 as set forth below, to be dispersed to the City upon the execution of this Agreement:

- a. Developer will deposit \$465,650.00 in cash.
- b. USP will deposit \$365,650.00 in cash and issue a promissory note secured by such assets as may be reasonably acceptable to the City in the amount of \$160,650.00 payable no later than 18 months from the date of this Agreement.

6. Water Credits. As of the date of this Agreement, Developer has approximately 484 acre feet of water credits held with the City (the "**Water Credits**") that may be allocated to the following parcels of the Land: Parcel Nos. 32:016:0088, 32:021:0064, 32:021:0063, 32:021:0061, 32:021:0050, 32:021:0059, 32:021:0060, 32:016:0087 and 32:017:0221 (each a "**Parcel**", or together, the "**Parcels**"). The City shall allocate the Water Credits to any such Parcel upon the City's approval of the final plat for such Parcel in the amount required by the City in the order that such Parcels are platted until the 484 acre feet of Water Credits has been fully expended.

7. Miscellaneous.

- a. Recitals and Introductory Paragraphs. The Recitals and the introductory paragraphs preceding the Recitals contained in this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

- b. Severability. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.
- c. Further Assurances, Documents and Acts. Each Party hereto agrees to cooperate in good faith with the others, and to execute and deliver such further documents and to take all further acts reasonably necessary in order to carry out the intent and purposes of this Agreement and the actions contemplated hereby. All provisions and requirements of this Agreement shall be carried out by each Party as allowed by law.
- d. Assignment. Developer shall have the right to assign all of its rights and responsibilities, including its payment obligations, under this Agreement to a third party without the approval of the City. Developer shall notify the City of any such assignment. The rights and obligations of the City under this Agreement shall not be assigned.
- e. Agreement to Run with the Land. A Memorandum of this Agreement shall be recorded against the Land and shall be deemed to run with the Land.
- f. Governing Law and Dispute Resolution. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. Any and all disputes arising out of or related to this Agreement or the Parties' performance hereunder shall be submitted to mediation before a mutually-acceptable mediator prior to initiation of litigation or any other binding or adjudicative dispute resolution process. The Parties shall: (i) mediate in good faith; (ii) exchange all documents which each believes to be relevant and material to the issue(s) in dispute; (iii) exchange written position papers stating their position on the dispute(s) and outlining the subject matter and substance of the anticipated testimony of persons having personal knowledge of the facts underlying the dispute(s), and; (iv) engage and cooperate in such further discovery as the Parties agree or mediator suggests may be necessary to facilitate effective mediation. Mediator, venue, and related costs shall be shared equally by the Parties to the dispute. Venue of the mediation shall be the State of Utah. This provision shall be specifically enforceable according to its terms, including but not limited to an action to compel mediation. In the event the Parties are unable to agree upon a mediator, the mediator shall be appointed by a court of competent jurisdiction in Utah's Fourth Judicial District. The prevailing party in any action to enforce in whole or in part this mediation clause or in any subsequently agreed-upon arbitration proceeding or mediation shall be entitled to reimbursement of attorneys' fees and costs incurred in said action. In the event any dispute arising hereunder is not resolved through mediation, the parties to that dispute may pursue any other remedy allowed by law. Any agreement by the Parties to arbitrate shall be governed by the agreement of the Parties.
- g. Notices. Any notice or communication required hereunder between the Parties must be in writing and may be given either personally or by registered or certified

mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice is given when delivered to the Party to whom it is addressed. Any Party hereto may at any time, by giving ten (10) days written notice to other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the addresses set forth below:

If to HG-Utah-1, LLC to:

With a copy to:

HG-Utah-1, LLC	York, Howell, and Guymon
1 Summit Ridge Parkway	10610 South Jordan Gateway, Ste. 200
Santaquin, Utah 84655	South Jordan, UT 84095
Attention: Robb Horlacher	Attention.: Dawn Soper

If to Utah Summit Partners, LLC to:

With a copy to:

Utah Summit Partners	Stoel Rives LLP
978 E. Woodoak Lane	201 South Main Street, Ste. 1100
Salt Lake City, Utah 84117	Salt Lake City, Utah 84111
Attention: Rick Lifferth	Attention: Meg Krivanec

And

Salisbury Land Development	
494 West 1300 North	
Springville, Utah 84663	
Attention: Rick Salisbury	Attention:

If to City:

With a copy to:

K. Aaron Shirley	Nielsen & Senior
Santaquin City Recorder	P.O. Box 970663
275 West Main Street	Orem, Utah 84097
Santaquin, Utah 84655	Attention: Brett B. Rich

- h. Relationship. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, agency, or other like agreement or relationship between the Parties.
- i. No Third Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the Parties and their assigns. No other party shall have any right of action based upon any provision of this Agreement whether as third party beneficiary or otherwise.
- j. Counterparts. This Agreement may be executed in duplicate counterparts, each of which is deemed to be an original.
- k. Duration. This Agreement shall continue in force and effect until all obligations contained herein have been satisfied.
- l. Acknowledgment. By its signature below each of the Parties acknowledges its obligations under this Agreement; affirms that it is authorized to perform each of those obligations; and shall be subject to all of the terms and conditions of this Agreement upon execution by both Parties.

[Signatures on following pages]

SANTAQUIN CITY

Kirk F. Hunsaker, Mayor

ATTEST:

K. Aaron Shirley, City Recorder

APPROVED AS TO FORM:

Brett B. Rich, City Attorney

**HG-UTAH-1, LLC,
A Utah Limited Liability Company**

Robb Horlacher, Manager

STATE OF UTAH

ss:

COUNTY OF UTAH

On this ____ day of _____, 2020, personally appeared before me Robb Horlacher, who is personally known to me and after being duly sworn stated that he is the Manager of HG-UTAH-1, LLC; that he is authorized to execute this Agreement on behalf of HG-UTAH-1, LLC; and that he executed the same.

Notary Public

**As to the provisions pertaining to USP:
UTAH SUMMIT PARTNERS, LLC,
A Utah Limited Liability Company**

Clark Ivory

STATE OF UTAH

ss:

COUNTY OF UTAH

On this ____ day of _____, 2020, personally appeared before me Clark Ivory, who is personally known to me and after being duly sworn stated that he is the Manager of Utah Summit Partners, LLC; that he is authorized to execute this Agreement on behalf of Utah Summit Partners, LLC; and that he executed the same.

Notary Public

And

Rick Salisbury

STATE OF UTAH

ss:

COUNTY OF UTAH

On this ____ day of _____, 2020, personally appeared before me Rick Salisbury, who is personally known to me and after being duly sworn stated that he is the Manager of Utah Summit Partners, LLC; that he is authorized to execute this Agreement on behalf of Utah Summit Partners; and that he executed the same.

Notary Public